

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

MARK ROBERT WEST,

Plaintiff,

-vs-

KEN IRWIN, in his official and  
individual capacities; JAMES W  
SHERMAN, in his official and  
individual capacities; GARY  
KOUBA, in his official and  
individual capacities; RICHARD  
ROY, in his official and  
individual capacities; BRAD  
MARTIN, in his official and  
individual capacities; THOMAS L.  
GAGE, in his official and  
individual capacities; YAKIMA,  
COUNTY; and KELLY MARTIN, in his  
official and individual  
capacities,

Defendants.

NO. CV-04-5012-LRS

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

BEFORE THE COURT is Defendants' Motion For Summary Judgment (Ct. Rec. 115) filed on February 28, 2006; and Defendants' Motion to Strike Evidence Submitted by Plaintiff (Ct. Rec. 159) filed on March 28, 2006. A hearing was held March 31, 2006 in Yakima, Washington. Karen Koehmstedt participated on behalf of the Plaintiff Mark Robert West; Lawrence Peterson participated on behalf of all named Defendants. The Court having considered the oral and written argument of counsel, enters this Order to memorialize the oral rulings of the Court which are incorporated herewith by reference. Accordingly,

1       **IT IS ORDERED** that:

2       1. Defendants' Motion for Summary Judgment, **Ct. Rec. 115**, filed on  
3 February 28, 2006 is **GRANTED**. Plaintiff has not demonstrated any section  
4 1983 liability. Plaintiff's claims for violation of 42 U.S.C. § 1983,  
5 §1985, §1988 and the 4<sup>th</sup>, 5<sup>th</sup>, and 14<sup>th</sup> Amendments are hereby **DISMISSED**  
6 **with prejudice**. The Court finds that the plaintiff was not deprived of  
7 a right secured by the Constitution.

8       The Court concludes that a reasonable officer confronted with the  
9 facts and circumstances known to Deputies Sherman, Kouba, Roy, and Martin  
10 at the time of West's arrest would have determined that probable cause  
11 existed for the arrest. Although later alibi evidence cleared the  
12 plaintiff, the arresting officer(s) acted reasonably, in good faith, and  
13 did arrest the plaintiff who was the person named in the supporting  
14 paperwork submitted to Superior Court Judge Michael Leavitt, resulting  
15 in a facially valid warrant being issued.

16       No showing has been made from which the trier of fact could  
17 reasonably conclude that the arresting and investigating deputies  
18 conducted a reckless investigation. See *Broam v. Bogan*, 320 F.3d 1023,  
19 1032 (9th Cir.2003) ("[A] law enforcement officer is not required by the  
20 Constitution to investigate independently every claim of innocence,  
21 whether the claim is based on mistaken identity or a defense such as lack  
22 of requisite intent." (internal quotation marks omitted)).

23       Plaintiff has failed to show that the alleged constitutional injury  
24 resulted from the implementation or execution of a government policy or  
25 custom made by those whose edicts or acts may fairly be said to represent  
26 official policy. In the absence of a constitutional violation by the

1 Defendant deputies, Defendant Yakima County cannot be held liable under  
2 42 U.S.C. §1983 based on the facts before the Court. Section 1983 "is not  
3 itself a source of substantive rights, but a method for vindicating  
4 federal rights elsewhere conferred." *Baker v. McCollan*, 443 U.S. 137,  
5 144 n. 3, 99 S.Ct. 2689, 61 L.Ed.2d 433 (1979).

6 Finally, a state actor, such as a law enforcement officer, is  
7 entitled to qualified immunity in an action filed under § 1983 if his or  
8 her conduct during a criminal investigation either does not violate a  
9 federal constitutional right, or the constitutional right was not clearly  
10 established on the date of the alleged violation. *Saucier v. Katz*, 533  
11 U.S. 194, 201, 121 S.Ct. 2151, 150 L.Ed.2d 272 (2001).

12 2. Defendants' Motion to Strike Evidence, **Ct. Rec. 159**, filed on  
13 March 28, 2006 is **DENIED without prejudice**. The Court considered the  
14 evidence for purposes of Defendants' summary judgement motion only. The  
15 Court, however, recognizes that Defendants have grounds to renew their  
16 motion.

17 3. **Remaining State Law Claims:** All that remains in this case,  
18 having dismissed plaintiff's claims for violation of 42 U.S.C. §1983, are  
19 state law tort claims (false arrest and imprisonment, malicious  
20 prosecution, malicious abuse of process, conspiracy, negligent and/or  
21 intentional infliction of emotional distress, outrage, defamation, and  
22 negligence--plaintiff has withdraw his state law claims for assault and  
23 battery).

24 "[I]n the usual case in which federal-law claims are eliminated  
25 before trial, the balance of factors . . . points toward declining to  
26 exercise jurisdiction over the remaining state-law claims."

1 *Imagineering, Inc. v. Kiewit Pacific Co.*, 976 F.2d 1303, 1309 (9<sup>th</sup>  
2 Cir.1002) (quoting *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350,  
3 108 S. Ct. 614, 619 (1988)). Under 28 U.S.C. §1367(c)(3), a district  
4 court "may decline to exercise supplemental jurisdiction over a claim  
5 . . . if . . . the district court has dismissed all claims over which it  
6 has original jurisdiction." The Court having dismissed plaintiff's  
7 federal claims, declines to exercise supplemental jurisdiction over any  
8 remaining state law claims.

9 Plaintiff's state law claims are accordingly **DISMISSED without**  
10 **prejudice.**

11 The District Court Executive is directed to file this Order and  
12 provide copies to counsel.

13 **DATED** this 4th day of April, 2006.

14  
15 *s/Lonny R. Suko*

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LONNY R. SUKO  
UNITED STATES DISTRICT JUDGE